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United States of America

In the

Supreme Court of the United States

OCTOBER TERM, 1943

Nos. 142-146

UNITED STATES, Petitioner,
vs.
HOWARD C. MYERS

—

UNITED STATES, Petitioner,
vs.
JOHN H. ARBLE

—

UNITED STATES, Petitioner,
vs.
CHARLES C. MARTIN

—

UNITED STATES, Petitioner,
vs.
WALTER O. PLITZ

—

UNITED STATES, Petitioner,
vs.
GEORGE H. SPITZ

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CLARIFICATION OF THE OPINION OF THE COURT

ROBERT M. DRYSDALE,
Attorney for Respondents,
1538 Dime Building,
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To The Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States.

Now Comes the respondents in the above entitled cases, by Robert M. Drysdale, their attorney, and respectfully shows unto the Court as follows:

In respondents' brief (pp. 61, 62) counsel suggested that in event that the Court disallowed extra compensation for night services, it would then become important to define the hours of a Sunday or a holiday for which extra Sunday and holiday pay is allowed. Respondents believe that the opinion of the Court fully covers that point (p. 10 of opinion) and that the extra Sunday and holiday pay is earned whenever the specified services are performed within the 24 hours of a Sunday or a holiday. Petitioner has taken the postion, however, that the opinion might mean otherwise; wherefor respondents request that the opinion of the Court be made specific in that regard.

Other questions of computation of overtime and Sunday and holiday pay will arise and which, we believe, can be answered by giving effect to the meaning of overtime pay and Sunday and holiday pay, as expressed in the opinion. We submit herewith, in an appendix, certain rules of computation which we believe are justified by the Court's decision, to be dealt with by the Court in any amendment to its opinion, or to be left to the Court of Claims for its decision, as may be deemed expedient by this Court.

ROBERT M. DRYSDALE,
Attorney for Respondents.

February 1944.

APPENDIX

OVERTIME PAY

Regular hours of work are eight hours within the same consecutive nine hour period of day or night, exclusive of Sundays or holidays, when duly scheduled in advance. When so scheduled, those hours become the employees' regular hours of work for the duration of that schedule. Unless otherwise so scheduled in advance, the regular hours of work on week days remain the hours between 8 a.m. and 5 p.m., as provided in the statute.[1]

Services performed (including waiting time when ordered to report for work) on week days in excess of or beyond the regular hours of work, whether preceding[2] or following the regular hours, even though falling within the nine hour period of from 8 a.m. to 5 p.m., as pro-

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[1] This gives full effect to the right of the collector to regulate the working hours. If they are not "regulated," the hours provided in the statute remain the regular hours of work.

Where the service is on a 24-hour basis, it is impracticable to schedule tours of duty on a nine hour basis, with one hour for food and rest. The old administrative practice in such cases is to prepare and post, a few days prior to its effective date, working schedules covering a two week period. These schedules usually call for eight hours continuous duty each day, including Sundays and holidays, with the understanding that the inspectors may take, when conditions permit, twenty minutes for lunch.

[2] This takes care of such instances as where the regular hours are from 8 a.m. to 5 p.m. and the employee is required to work from 6 a.m. to 5 p.m. He becomes entitled to one unit of overtime for the two hours from 6 a.m. to 8 a.m.

vided in the statute,[3] or other assignments to duty outside of the regular hours,[4] shall be subject to overtime compensation at the rate fixed in the statute; namely, one-half day's additional pay for each employee for each two hours or fraction thereof, of at least one hour, with the limitation that the overtime pay of any such employee shall not exceed 2½ days' additional pay within the same 24-hour period.

[3] Likewise, this takes care of such instances as where the working hours have been regulated and the extra hours worked fall within the nine-hour period from 8 a.m. to 5 p.m. specified in the statute; thus an employee scheduled in advance to work an eight hour tour from 6 a.m. to 2 p.m. may be required to remain on duty until 4 p.m., thus making ten hours of service. This rule recognizes the right of the collector to move the eight hour period so that the hour of 2 p.m. takes the place of 5 p.m. specified in the statute.

[4] This assures overtime compensation in cases where an officer, after have completed his regular hours has gone home, and is called back to work, as distinguished from the cases where he remains on duty after the close of his regular hours.

SUNDAY AND HOLIDAY PAY

Officers or employees who are required to work, or who are required to report for duty, and pursuant to such requirements report, or perform services, during any of the 24 hours of a Sunday or a holiday, shall be paid two days' extra compensation (Sunday and holiday rate) for any services on those days up to a limit of a normal day of eight hours (within a period of nine consecutive hours, computed from the time of first reporting).[5] Services performed in excess of the above eight hours,[6] or beyond or subsequent to such nine hour period,[7] shall be compensated at the overtime rate, as distinguished from the Sunday and holiday rate.

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[5] This gives full effect to the right to Sunday and holiday pay for working at any time on Sundays and holidays.

[6] This recognizes the right to overtime pay in addition to Sunday and holiday pay when more than eight hours work is performed on Sundays or holidays. Heretofore when an employee has worked between the hours of 8 a.m. and 5 p.m. on Sunday, and also during the night hours on Sunday, as between 12 midnight and 8 a.m. or between 5 p.m. and 12 midnight, he has been paid two days' pay for any time worked between 8 a.m. and 5 p.m., and in addition thereto, has been paid at the night rate for work during the other hours.

[7] This protects the employee from being called to work on Sundays or holidays two or more times on the same day in order to make up an eight hour period; otherwise an officer may be required to work in such instances as from 6 a.m. to 8 a.m., then from 11 a.m. to 1 p.m., then 4 p.m. to 6 p.m., and 8 p.m. to 10 p.m., so breaking up his whole day for eight hours actual work. An officer or employee who is required to work on a Sunday or a holiday has the right to expect that his eight hours of work may be performed within a nine hour period.